

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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11 WILLIAM BONEY, Case No. 3:15-cv-00193-MMD-WGC
12 Petitioner,
13 v. ORDER
14 GREGORY SMITH, *et al.*,
15 Respondents.

16 This *pro se* petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 comes
17 before the Court on petitioner's election to return to state court to exhaust his unexhausted
18 claims. (ECF No. 33.)

19 On February 21, 2017, the Court determined that this is a mixed petition containing
20 both exhausted and unexhausted claims. As the Court cannot proceed on a mixed
21 petition, it directed petitioner to select one of three options: (1) submit a sworn declaration
22 voluntarily abandoning the unexhausted claims so as to proceed on only the exhausted
23 claims; (2) return to state court to exhaust the unexhausted claims, in which case the
24 petition would be denied without prejudice; or (3) file a motion to stay and abey the
25 exhausted claims so petitioner could return to state court to exhaust his unexhausted
26 claims.

27 On April 27, 2017, petitioner filed a motion to stay and abey. On December 15,
28 2017, the Court denied petitioner's motion and directed petitioner to submit a sworn

1 declaration advising the Court either (1) that he is voluntarily abandoning his unexhausted
2 claims and will proceed on the exhausted claims only or (2) that he will return to state
3 court to exhaust his unexhausted claims, in which case this federal habeas petition will
4 be denied without prejudice.

5 On January 29, 2018, petitioner filed a sworn declaration advising the Court that
6 he will return to state court to exhaust his unexhausted claims. (ECF No. 33.) It is
7 therefore ordered that the petition in this action is dismissed without prejudice.

8 It is further ordered that the Clerk of the Court shall enter judgment accordingly.
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10 DATED THIS 1st day of February 2018.
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12 MIRANDA M. DU
13 UNITED STATES DISTRICT JUDGE
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